CF0000061996

APPEAL OF

No. 645/98 Name [illegible]

Father's name [illegible]

Residence [illegible] Age 31 yrs

Sentenced S.T.N 94/98 On 13-11-98

Under section 302 IPC by [illegible]

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 13-11-98
2. Date of which copy received 13-11-98
3. Date on which appeal sent 14/11/98
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 645/98 Name [illegible]

Continued in [illegible] Jail [illegible]

No. 4730 Dated 14/11/98 1998

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur Surguja to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

[illegible]

Superintendent Jail

Date of receipt in C.J.M's Office 17-11-98

Date of receipt record to accompany 9-12-98

Memo of Appeal of the Appeliate Court [illegible]

No. 9 Dated 9 199 12-98

Forwarded to the [illegible]

C.J. Magistrate

Date of receipt in Appeliate Court [illegible]

//SURGUJA TY.// * * *

with in time

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आदेश पत्रक

मामला क्रमांक C.S.A. 102/99 सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench:

Hon'ble Shri L.C.Bhadoo, &
Hon'ble Shri V.K. Shrivastava, JJ.

27-10-2006

Shri Anand Mohan Tiwari, counsel for the appellant.

Shri G.D. Vaswani, Addl. Public Prosecutor with Shri D.C. Pandey, Panel Lawyer for the State.

Oral judgment dictated on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 13-11-1998 passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.94/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of his daughter-Ledhe, convicted him under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life.

The case of the prosecution, in brief, is that Dhari Ram (PW-1) gave merg intimation (Ex-P/8) to Police Station Balrampur on 21-01-1998 at about 11.45 a.m. to the effect that yesterday he along with Asru, Fitul, Chandan and Guna were watching the body of Rijni near the house of Chaman Nagasiya. They saw that Tekra after committing the murder of his wife, pushed Chaman out of the house after threatening him and hide himself in the house of Chaman, at that time he was carrying his daughter Ledhe. The time was about 12.00 noon. They heard the sound of beating from the house of Chaman and they also heard the cries of a female child,

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on which they thought that the accused has committed the murder of his daughter. When they went to the house of Chaman they saw that the accused after committing the murder of his daughter Ledhe was sitting near the door holding crow bar in his hand. Somehow, they were able to caught hold of the accused and they saw that his daughter was lying dead inside and there was an injury on the head of Ledhe. One piece of wooden plank was struck in the back of the deceased; thereafter they tide the accused with a rope.

On receiving this report, the Station House Officer, Police Station Balrampur registered the First Information Report (Ex-P/1), left for the scene of occurrence and after giving notice (Ex-P/2) to the Panchas, prepared the inquest report (Ex-P/3) of the body of Ledhe. He also prepared the site plan (Ex-P/4). One wooden piece of *peeda* stained with blood, blood stained soil and plain soil were taken into possession from the place of occurrence under Ex-P/5. Site plan (Ex-P/6) was prepared by Halka Patwari. Body of Ledhe was sent for postmortem examination to the Primary Health Centre, Balrampur where Dr. S.P. Vaish (PW-10) conducted postmortem on the body of Ledhe and opined that the cause of death was asphyxia, coma and as a result of throttling. He found fractures on skull and hyoid bones. The seized articles were sent to Forensic Science Laboratory, Sagar from where report (Ex-P/11) was received.

After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate First Class, Ramanujganj, who in turn committed the case to the Sessions Judge, Ambikapur, from

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where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused examined 10 witnesses. On the other hand, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he pleaded innocence and denied the prosecution case. He stated that he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in para one of this judgment.

We have heard learned counsel for the parties.

At the outset, learned counsel for the accused/appellant has not disputed the homicidal death of Ledhe. Apart from that, from the evidence of Dr. S.P. Vaish (PW-10), it appears that there were six injuries on the neck, hyoid bone was fractured, parietal bone was also fractured and the cause of death was asphyxia, coma and as a result of throttling. Postmortem report is Ex-P/9. Therefore, in view of the above medical evidence, it is established that death of Ledhe was homicidal in nature.

Even, counsel for the accused/appellant very fairly did not dispute the involvement of the accused/appellant in the crime in question. Perusal of the evidence of Dhari Ram (PW-1), who lodged the report, reveals that the accused came along with his deceased daughter Ledhe and entered the house of Chaman. He heard the cries of a female child and thereafter the cries were stopped. When the accused entered the house of Chaman,

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he pushed out Chaman from the house, he was keeping his daughter with him and when they heard the sound of beating and cries of a female child from the house of Chaman, they thought that the accused/appellant has killed his daughter. Thereafter, they saw that the accused was sitting at the door holding crow bar in his hand. Chandan (PW-6) has also corroborated the above evidence. Therefore, in view of the above evidence, it is established that the accused entered the house of Chaman in presence of these witnesses carrying his daughter Ledhe and he pushed Chaman out of his house, these witnesses heard the cries of a female child, thereafter they saw that the girl was dead. On postmortem, several injuries were found on the body of Ledhe and even her hyoid bone and parietal bone were found fractured. Therefore, in view of the above evidence it is established that the accused was the author of the crime in question i.e. committing murder of Ledhe.

Learned counsel for the accused/appellant argued that it has come in the cross-examination of Dhari Ram (PW-1) and Chandan (PW-6) that at the time of the incident accused became mad, therefore, the accused is entitled for the benefit of Section 84 of the I.P.C. and as such, he has been wrongly convicted for the commission of the crime.

We have examined the record and the plea of unsound mind of the accused at the time of commission of the crime. The plea was not raised before the trial Court at any point of time and no request was made on behalf of the defence for getting the accused medically examined in order to ascertain as to whether he was mentally unsound at the time of commission of the crime. Moreover, the examination of the accused

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under Section 313 of the Cr.P.C. indicates that the accused gave the reply of all the questions very intelligently. It is not the case of the accused that even before or after commission of the crime at any point of time, the accused was suffering from unsoundness of mind.

Now the question for determination remains before the Court is that as to whether at the time of commission of the crime, the accused was suffering from the unsoundness of mind and by reason of unsoundness of mind, he was incapable of knowing the nature of the act, or that what he was doing was either wrong or contrary to law. As per the provisions of Section 105 of the Indian Evidence Act, 1872, the burden was on the accused to prove the existence of circumstances bringing the case within the exceptions of Section 84 of the I.P.C. as has been held by the Apex Court in the matter of T.N. LAKSHMAIAH V. STATE OF KARNATAKA reported in AIR 2001 SC 3828 in which the Court held that the burden of proving the exception under Section 84 is on the accused. Similar is the judgment of Apex Court in the matter of STATE OF M.P. V. AHMADULLA reported in AIR 1961 SC 998 in which it has been held that the burden of proving that the mental condition of the accused was not proper at the time when the said offence was committed lies on the accused in view of Section 105 of the Evidence Act. It is settled position of law that every man is presumed to be sane and to possess a sufficient degree of reasons to be responsible for his acts unless the contrary is proved. At no point of time, application under Section 328 of the Cr.P.C. was moved by the accused for getting him medically examined in order to ascertain as to

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whether he was suffering from unsoundness of mind at the time of commission of crime.

Merely by saying by the two witnesses mentioned above that at the time of commission of the crime, accused became mad, they were not the medical experts and these witnesses are ordinary persons. Even a fit of anger can also be said to be madness by the ordinary persons, as has been mentioned earlier that there is nothing on the record even before and after commission of the crime, at any point of time, accused was behaving like a mad man. Apart from that, there is nothing on record to show that before commission of the crime, at any point of time, accused committed any act, which can be said to be an act of the person suffering from unsoundness of mind. Merely the accused was having cordial relationship with his wife and daughter before commission of the crime cannot be taken to be a ground that there was no motive for commission of the crime, therefore, the act of the accused was a result of the unsoundness of mind. Therefore, except the oral evidence of these two witnesses there is nothing on record whereby it can be held that accused was suffering from unsoundness of mind at the time of commission of crime.

For the foregoing reasons, we do not find any substance in the argument of learned counsel for the accused/appellant, as such, the appeal being devoid of merit, there is no infirmity or illegality in the judgment of learned trial Court.

In the result, the appeal fails and it is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
V.K. Shrivatava
Judge

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